

1 UNITED STATES DISTRICT COURT
2 DISTRICT OF NEVADA

3 BRETT DOYLE,

4 Plaintiff

5 v.

6 STATE OF NEVADA, et al.,

7 Defendants

Case No.: 3:19-cv-00725-MMD-CSD

**Report & Recommendation of
United States Magistrate Judge**

Re: ECF No. 64

8 This Report and Recommendation is made to the Honorable Miranda M. Du, Chief
9 United States District Judge. The action was referred to the undersigned Magistrate Judge
10 pursuant to 28 U.S.C. § 636(b)(1)(B) and the Local Rules of Practice, LR 1B 1-4.

11 Before the court is Plaintiff's motion for an emergency injunction order. (ECF No. 64.)
12 Defendants filed a response (ECF Nos. 66, 66-1) as well as a supplemental response (ECF Nos.
13 67, 67-1). Plaintiff filed a reply (ECF No. 68) as well as a supplemental reply (ECF No. 69).¹

14 After a thorough review, it is recommended that Plaintiff's motion be denied.

15 **I. BACKGROUND**

16 Plaintiff is an inmate in the custody of the Nevada Department of Corrections (NDOC),
17 proceeding pro se with this action pursuant to 42 U.S.C. § 1983. (Compl., ECF No. 7.) The
18 events giving rise to this action took place while Plaintiff was housed at Lovelock Correctional
19 Center (LCC). (*Id.*)

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21
22 ¹ The court has exercised its discretion on this one occasion not to strike the supplemental
23 briefing by the parties (ECF Nos. 67, 67-1 and 69). However, the parties are advised that in the
future, they are limited to a motion, response, and reply. LR 7-2. Supplemental briefing is not
permitted without leave of court. LR 7-2(b).

1 The court screened Plaintiff's complaint and allowed him to proceed with First
2 Amendment Free Exercise Clause and Establishment Clause claims against Scott Davis, Renee
3 Baker, and Harold Wickham. Plaintiff alleges that he is an adherent of Messianic Judaism, and
4 Davis denied Plaintiff's request to observe Messianic Jewish holy days and fast days on the days
5 they actually fall. Plaintiff further alleges that Davis favors Orthodox/Rabbinical Judaism over
6 Messianic Judaism, as well as Catholics and the Siddha Yoga faith group, because he allows
7 them to celebrate their holy days on days that are not their assigned prison worship days, while
8 denying the same to Messianic Judaism. He avers that Baker and Wickham were made aware of
9 these issues via the grievance process, but they failed to take corrective action.

10 Defendants' motion for summary judgment was denied, with the court finding there are
11 genuinely disputed material facts regarding whether Plaintiff's rights under the Free Exercise and
12 Establishment Clauses were violated. (ECF Nos. 49, 50.) The parties participated in a settlement
13 conference, but they were unsuccessful in resolving this matter. (ECF No. 58.) The parties' joint
14 pretrial order is currently due on May 4, 2023. (ECF No. 71.)

15 In this motion, Plaintiff states that LCC's Associate Warden of Operations, K. LeGrand,
16 posted documents on February 10, 2023, announcing a change to LCC's religious worship
17 schedule. Plaintiff claims this eliminated the weekly assembly of Messianic Jews on the Sabbath,
18 which is a weekly holy day established under Administrative Regulation (AR) 810. Plaintiff
19 contends that the Sabbath runs from sunset Friday until one hour after sundown on Saturday,
20 with services being conducted on Friday evening and Saturday morning (with the Saturday
21 morning service being allotted two hours). Under this change to the schedule, Plaintiff asserts
22 two faith groups, Episcopal and The Way, are allowed to worship during those times. According
23 to Plaintiff, neither of these are recognized faith groups under AR 810, and neither has an

1 association with the Sabbath. The Messianic Judaism faith group was given a spot on
 2 Wednesdays in the chapel, but this is not the Messianic Judaism holy day.

3 II. DISCUSSION

4 In seeking injunctive relief, "there must be a relationship between the injury claimed in
 5 the motion for injunctive relief and the conduct asserted in the underlying complaint." *Pacific*
 6 *Radiation Oncology, LLC v. Queen's Medical Center*, 810 F.3d 631, 636 (9th Cir. 2015). "This
 7 requires a sufficient nexus between the claims raised in a motion for injunctive relief and the
 8 claims set forth in the underlying complaint itself." *Id.* "The relationship between the preliminary
 9 injunction and the underlying complaint is sufficiently strong where the preliminary injunction
 10 would grant 'relief of the same character as that which may be granted finally.'" *Id.* (quoting *De*
 11 *Beers Consol. Mines v. United States*, 325 U.S. 212, 220 (1945)). "Absent that relationship or
 12 nexus, the district court lacks authority to grant the relief requested." *Id.*

13 Plaintiff's complaint identifies specific instances where he was denied the ability to
 14 observe religious holy days and fast days on the days they occurred: Rosh Hashanah on
 15 September 10 and 11, 2018, fast on the "9th of AV" to be observed on July 23, 2018, Yom
 16 Kippur fast on September 19, 2018, holy day service of Yom Kippur on September 20, 2018, the
 17 Messianic Judaism holy day service of Sukkot (day 1) on September 24, 2018, the holy day
 18 service for Sukkot (day 9) on October 1, 2018, the holy day meal service for Sukkot (days 1-8),
 19 holy day service for Chanukah (day 1) on December 13, 2018, holy day service for Chanukah
 20 (day 8) on December 10, 2018, the Fast of Ester on February 19, 2018, the Fast of Ester service
 21 on February 19, 2018, Rosh Hashanah (day 1) service on September 29, 2018, Yom Kippur fast
 22 on October 9, 2019, Yom Kippur service on October 8, 2019, Sukkot (day 1) service on October
 23

1 13, 2019, Sukkot (day 8) service on October 20, 2019, Sukkot (days 1-8) meals (2019). (ECF
2 No. 7 at 6, 11, 13, 14.)

3 Plaintiff's complaint focuses on: Plaintiff not being able to observe these religious holy
4 days and fast days on the days they occurred, instead of on the worship day designated by the
5 prison; the allegation that other religions are allowed to observe their holy days on dates they
6 occurred, that are not their regular prison worship days; and that Messianic Judaism is a separate
7 and distinct faith group from Orthodox or Rabbinical Judaism.

8 The court finds there is not a sufficient nexus between the assertions made in this motion
9 seeking an emergency injunction order and the allegations proceeding in this action. Plaintiff's
10 complaint contains no mention of his ability to observe the weekly Sabbath on Friday evening
11 and Saturday morning. Nor does it mention his new allegation that LCC officials are elevating
12 the religious needs of the Episcopal and The Way groups above those of Messianic Judaism. The
13 parties proceeded with discovery and then beyond summary judgment based on the allegations
14 regarding the specific violations of his rights alleged in the complaint. The joint pretrial order is
15 due in a few weeks, and then this matter will proceed to trial. Plaintiff is essentially asking the
16 court to amend his complaint at this late stage with additional allegations of violations of his
17 religious rights, invoking additional rights—the Equal Protection Clause and the Religious Land
18 Use and Institutionalized Persons Act (RLUIPA))—that are not at issue in this case.

19 Moreover, Defendants represent that Plaintiff has not exhausted his administrative
20 remedies with respect to the allegations that he is being denied his right to observe the Sabbath
21 according to his faith, which is a prerequisite to bringing a lawsuit. 42 U.S.C. § 1997e(a). This is
22 important because the exhaustion requirement “allows prison officials an opportunity to resolve
23 disputes concerning the exercise of their responsibilities before being haled into court.” *Jones v.*

1 *Bock*, 549 U.S. 199, 204 (2007). Exhaustion also “promotes efficiency.” *Woodford v. Ngo*, 548
2 U.S. 81, 89 (2006) (citation omitted). Plaintiff should not be permitted to subvert that process by
3 essentially trying to have the court interpret his claims much more broadly than they were
4 construed on screening to include these new alleged violations of his rights.

5 Therefore, Plaintiff’s request for emergency injunctive relief should be denied.

6 **III. RECOMMENDATION**

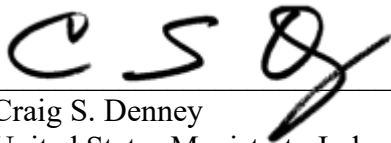
7 IT IS HEREBY RECOMMENDED that the District Judge enter an order **DENYING**
8 Plaintiff’s request for an emergency injunction order (ECF No. 64).

9 The parties should be aware of the following:

10 1. That they may file, pursuant to 28 U.S.C. § 636(b)(1)(C), specific written objections to
11 this Report and Recommendation within fourteen days of being served with a copy of the Report
12 and Recommendation. These objections should be titled “Objections to Magistrate Judge’s
13 Report and Recommendation” and should be accompanied by points and authorities for
14 consideration by the district judge.

15 2. That this Report and Recommendation is not an appealable order and that any notice of
16 appeal pursuant to Rule 4(a)(1) of the Federal Rules of Appellate Procedure should not be filed
17 until entry of judgment by the district court.

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19 Dated: April 10, 2023

20 
21 Craig S. Denney
22 United States Magistrate Judge
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